

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL

No. 869

Introduced by Senator Ridley-Thomas

February 23, 2007

An act to amend Sections 1872.83 and 11751.7 of, and to add Section 1872.835 to, the Insurance Code, to add Section 3701.9 to the Labor Code, and to amend Section 1088 of the Unemployment Insurance Code, relating to workers' compensation insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 869, as amended, Ridley-Thomas. Workers' compensation insurance: fraud.

Existing law generally regulates unemployment insurance.

This bill would provide that the Fraud Division within the Department of Insurance shall establish and maintain the Uninsured Employer ~~Database~~ *Identification Program* for the purpose of identifying employers in violation of the requirement to provide workers' compensation insurance. The database shall regularly collect specified information.

This bill would provide that the Uninsured Employer-~~Database~~ *Identification Program* shall be funded from fraud assessments, as specified.

This bill would also require that the rating organization designated the statistical agent by the commissioner shall provide to the Fraud Division a current list of insured employers, in a manner that the Fraud Division prescribes, for use in the Uninsured Employer-~~Database~~ *Identification Program*.

This bill would also provide that a current list of all employers reporting contributions and wages paid, be provided to the Fraud

Division, in a manner prescribed, for use in the Uninsured Employer Database Identification Program.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1872.83 of the Insurance Code is
2 amended to read:

3 1872.83. (a) The commissioner shall ensure that the Fraud
4 Division aggressively pursues all reported incidents of probable
5 workers' compensation fraud, as defined in Sections 11760 and
6 11880, and in subdivision (a) of Section 1871.4, and in Section 549
7 of the Penal Code, and forwards to the appropriate disciplinary
8 body the names, along with all supporting evidence, of any
9 individuals licensed under the Business and Professions Code who
10 are suspected of actively engaging in fraudulent activity. The Fraud
11 Division shall forward to the Insurance Commissioner or the
12 Director of Industrial Relations, as appropriate, the name, along
13 with all supporting evidence, of any insurer, as defined in
14 subdivision (c) of Section 1877.1, suspected of actively engaging
15 in the fraudulent denial of claims.

16 (b) To fund increased investigation and prosecution of workers'
17 compensation fraud, and of willful failure to secure payment of
18 workers' compensation, in violation of Section 3700.5 of the Labor
19 Code, there shall be an annual assessment as follows:

20 (1) The aggregate amount of the assessment shall be determined
21 by the Fraud Assessment Commission, which is hereby established.
22 The commission shall be composed of seven members consisting
23 of two representatives of organized labor, two representatives of
24 self-insured employers, one representative of insured employers,
25 one representative of workers' compensation insurers, and the
26 President of the State Compensation Insurance Fund, or his or her
27 designee.

28 The Governor shall appoint members representing organized
29 labor, self-insured employers, insured employers, and insurers.
30 The term of office of members of the commission shall be four
31 years, and a member shall hold office until the appointment of a
32 successor. The President of the State Compensation Insurance
33 Fund shall be an ex officio, voting member of the commission.

Members of the commission shall receive one hundred dollars (\$100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the performance of commission duties. Payment of per diem and travel expenses shall be made from the Workers' Compensation Fraud Account in the Insurance Fund, established in paragraph (4), upon appropriation by the Legislature.

(2) In determining the aggregate amount of the assessment, the Fraud Assessment Commission shall consider the advice and recommendations of the Fraud Division and the commissioner.

(3) The aggregate amount of the assessment shall be collected by the Director of Industrial Relations pursuant to Section 62.6 of the Labor Code. The Fraud Assessment Commission shall annually advise the Director of Industrial Relations, not later than March 15, of the aggregate amount to be assessed for the next fiscal year.

(4) The amount collected, together with the fines collected for violations of the unlawful acts specified in Sections 1871.4, 11760, and 11880, Section 3700.5 of the Labor Code, and Section 549 of the Penal Code, shall be deposited in the Workers' Compensation Fraud Account in the Insurance Fund, which is hereby created, and may be used, upon appropriation by the Legislature, only for enhanced investigation and prosecution of workers' compensation fraud and of willful failure to secure payment of workers' compensation as provided in this section.

(c) For each fiscal year, the total amount of revenues derived from the assessment pursuant to subdivision (b) shall, together with amounts collected pursuant to fines imposed for unlawful acts described in Sections 1871.4, 11760, and 11880, Section 3700.5 of the Labor Code, and Section 549 of the Penal Code, not be less than three million dollars (\$3,000,000). Any funds appropriated by the Legislature pursuant to subdivision (b) that are not expended in the fiscal year for which they have been appropriated, and that have not been allocated under subdivision (f), shall be applied to satisfy for the immediately following fiscal year the minimum total amount required by this subdivision. In no case may that money be transferred to the General Fund.

(d) After incidental expenses *and funding of the Uninsured Employer Identification Program established in Section 1872.835*, at least 40 percent of the funds to be used for the purposes of this

1 section shall be provided to the Fraud Division of the Department
2 of Insurance for enhanced investigative efforts, ~~including the~~
3 ~~operation of the Uninsured Employer Database as established in~~
4 ~~Section 1872.835~~, and at least 40 percent of the funds shall be
5 distributed to district attorneys, pursuant to a determination by the
6 commissioner with the advice and consent of the division and the
7 Fraud Assessment Commission, as to the most effective distribution
8 of moneys for purposes of the investigation and prosecution of
9 workers' compensation fraud cases and cases relating to the willful
10 failure to secure the payment of workers' compensation. Each
11 district attorney seeking a portion of the funds shall submit to the
12 commissioner an application setting forth in detail the proposed
13 use of any funds provided. A district attorney receiving funds
14 pursuant to this subdivision shall submit an annual report to the
15 commissioner with respect to the success of his or her efforts.
16 Upon receipt, the commissioner shall provide copies to the Fraud
17 Division and the Fraud Assessment Commission of any application,
18 annual report, or other documents with respect to the allocation of
19 money pursuant to this subdivision. Both the application for
20 moneys and the distribution of moneys shall be public documents.
21 Information submitted to the commissioner pursuant to this section
22 concerning criminal investigations, whether active or inactive,
23 shall be confidential.

24 (e) If a district attorney is determined by the commissioner to
25 be unable or unwilling to investigate and prosecute workers'
26 compensation fraud claims or claims relating to the willful failure
27 to secure the payment of workers' compensation, the commissioner
28 shall discontinue distribution of funds allocated for that county
29 and may redistribute those funds according to this subdivision.

30 (1) The commissioner shall promptly determine whether any
31 other county could assert jurisdiction to prosecute the fraud claims
32 or claims relating to the willful failure to secure the payment of
33 workers' compensation that would have been brought in the
34 nonparticipating county, and if so, the commissioner may award
35 funds to conduct the prosecutions redirected pursuant to this
36 subdivision. These funds may be in addition to any other fraud
37 prosecution funds or claims relating to the willful failure to secure
38 the payment of workers' compensation prosecution otherwise
39 awarded under this section. Any district attorney receiving funds
40 pursuant to this subdivision shall first agree that the funds shall be

1 used solely for investigating and prosecuting those cases of
2 workers' compensation fraud or claims relating to the willful failure
3 to secure the payment of workers' compensation that are redirected
4 pursuant to this subdivision and submit an annual report to the
5 commissioner with respect to the success of the district attorney's
6 efforts. The commissioner shall keep the Fraud Assessment
7 Commission fully informed of all reallocations of funds under this
8 paragraph.

9 (2) If the commissioner determines that no district attorney is
10 willing or able to investigate and prosecute the workers'
11 compensation fraud claims or claims relating to the willful failure
12 to secure the payment of workers' compensation arising in the
13 nonparticipating county, the commissioner, with the advice and
14 consent of the Fraud Assessment Commission, may award to the
15 Attorney General some or all of the funds previously awarded to
16 the nonparticipating county. Before the commissioner may award
17 any funds, the Attorney General shall submit to the commissioner
18 an application setting forth in detail his or her proposed use of any
19 funds provided and agreeing that any funds awarded shall be used
20 solely for investigating and prosecuting those cases of workers'
21 compensation fraud or claims relating to the willful failure to secure
22 the payment of workers' compensation that are redirected pursuant
23 to this subdivision. The Attorney General shall submit an annual
24 report to the commissioner with respect to the success of the fraud
25 prosecution efforts of his or her office.

26 (3) Neither the Attorney General nor any district attorney shall
27 be required to relinquish control of any investigation or prosecution
28 undertaken pursuant to this subdivision unless the commissioner
29 determines that satisfactory progress is no longer being made on
30 the case or the case has been abandoned.

31 (4) A county that has become a nonparticipating county due to
32 the inability or unwillingness of its district attorney to investigate
33 and prosecute workers' compensation fraud or the willful failure
34 to secure the payment of workers' compensation shall not become
35 eligible to receive funding under this section until it has submitted
36 a new application that meets the requirements of subdivision (d)
37 and the applicable regulations.

38 (f) If in any fiscal year the Fraud Division does not use all of
39 the funds made available to it under subdivision (d), any remaining
40 funds may be distributed to district attorneys pursuant to a

1 determination by the commissioner in accordance with the same
2 procedures set forth in subdivision (d).

3 (g) The commissioner shall adopt rules and regulations to
4 implement this section in accordance with the rulemaking
5 provisions of the Administrative Procedure Act (Chapter 3.5
6 (commencing with Section 11340) of Part 1 of Division 3 of Title
7 2 of the Government Code). Included in the rules and regulations
8 shall be the criteria for redistributing funds to district attorneys
9 and the Attorney General. The adoption of the rules and regulations
10 shall be deemed to be an emergency and necessary for the
11 immediate preservation of the public peace, health, and safety, or
12 general welfare.

13 (h) The department shall report to the Governor, the Legislature,
14 to the committees of the Senate and Assembly having jurisdiction
15 over insurance, and the Fraud Assessment Commission on the
16 activities of the Fraud Division and district attorneys supported
17 by the funds provided by this section in the annual report submitted
18 pursuant to Section 12922.

19 The annual report shall include, but is not limited to, all of the
20 following information for the department and each district
21 attorney's office:

22 (1) All allocations, distributions, and expenditures of funds.

23 (2) The number of search warrants issued.

24 (3) The number of arrests and prosecutions, and the aggregate
25 number of parties involved in each.

26 (4) The number of convictions and the names of all convicted
27 fraud perpetrators.

28 (5) The estimated value of all assets frozen, penalties assessed,
29 and restitutions made for each conviction.

30 (6) Any additional items necessary to fully inform the Fraud
31 Assessment Commission and the Legislature of the fraud-fighting
32 efforts financed through this section.

33 (i) In order to meet the requirements of subdivision (g), the
34 department shall submit a biannual information request to those
35 district attorneys who have applied for and received funding
36 through the annual assessment process under this section.

37 (j) Assessments levied or collected to fight workers'
38 compensation fraud and insurance fraud are not taxes. Those funds
39 are entrusted to the state to fight fraud and the willful failure to
40 secure the payment of workers' compensation by funding state

1 and local investigation and prosecution efforts. Accordingly, any
2 funds resulting from assessments, fees, penalties, fines, restitution,
3 or recovery of costs of investigation and prosecution deposited in
4 the Insurance Fund shall not be deemed “unexpended” funds for
5 any purpose and, if remaining in that account at the end of any
6 fiscal year, shall be applied as provided in subdivision (f) and to
7 offset or augment subsequent years’ program funding.

8 (k) The Bureau of State Audits shall evaluate the effectiveness
9 of the efforts of the Fraud Assessment Commission, the Fraud
10 Division, the Department of Insurance, and the Department of
11 Industrial Relations, as well as local law enforcement agencies,
12 including district attorneys, in identifying, investigating, and
13 prosecuting workers’ compensation fraud and the willful failure
14 to secure payment of workers’ compensation. The report shall
15 specifically identify areas of deficiencies. Included in this report
16 shall be recommendations on whether the current program provides
17 the appropriate levels of accountability for those responsible for
18 the allocation and expenditure of funds raised from the assessment
19 provided in this section. The Bureau of State Audits shall submit
20 a report to the Chairperson of the Senate Committee on Labor and
21 Industrial Relations and the Chairperson of the Assembly
22 Committee on Insurance on or before May 1, 2004.

23 SEC. 2. Section 1872.835 is added to the Insurance Code, to
24 read:

25 1872.835. (a) The Fraud Division shall establish and maintain
26 the Uninsured Employer ~~Database~~ *Identification Program* for the
27 purpose of identifying employers in violation of Section 3700 of
28 the Labor Code. The database shall regularly collect the following
29 information:

30 (1) A list of employers reporting contributions and wages paid
31 under Section 1088 of the Unemployment Insurance Code from
32 the Employment Development Department.

33 (2) A list of employers with certificates of consent to self-insure
34 as provided for under Section 3700 of the Labor Code from the
35 Department of Industrial Relations.

36 (3) A list of insured employers from any licensed rating
37 organization organized under Section 11751.1.

38 (b) The Fraud Division shall regularly compare the list of
39 employers reporting employer contributions and wages paid under
40 Section 1088 of the Unemployment Insurance Code with the lists

1 of insured and permissibly self-insured employers provided from
2 the Department of Industrial Relations and any licensed rating
3 organization. The division shall contact ~~any employer that is a~~
4 *random, representative sample of employers* reporting contributions
5 and wages paid but not included on either the list of employers
6 with valid certificates of consent to self-insure or a list of insured
7 employers provided by a licensed rating organization and request
8 proof of workers' compensation insurance coverage. If, after 10
9 calendar days, the employer fails to provide satisfactory proof of
10 workers' compensation coverage, the division shall forward to the
11 Insurance Commissioner or the Director of Industrial Relations,
12 as appropriate, the name of the employer believed to be in violation
13 of Section 3700 of the Labor Code along with all supporting
14 evidence.

15 SEC. 3. Section 11751.7 of the Insurance Code is amended to
16 read:

17 11751.7. (a) The rating organization designated the statistical
18 agent pursuant to Section 11751.5 shall provide to the Director of
19 Industrial Relations, upon request, any information in the
20 possession of, or reasonably attainable by the rating organization,
21 that would assist the Director of Industrial Relations to identify
22 employers who fail to secure adequate insurance in violation of
23 Section 3700 of the Labor Code. The information requested
24 pursuant to this section shall be provided by the rating organization
25 in a form and manner prescribed by the Director of Industrial
26 Relations.

27 (b) The rating organization designated the statistical agent
28 pursuant to Section 11751.5 shall provide to the Registrar of
29 Contractors of the Contractor's State License Board, upon request,
30 any information in the possession of, or reasonably attainable by,
31 the rating organization that would assist in identifying licensed
32 contractors who fail to secure adequate insurance in violation of
33 Section 3700 of the Labor Code. The information requested
34 pursuant to this section shall be provided by the rating organization
35 in a form and manner prescribed by the Registrar of Contractors.

36 (c) The rating organization designated the statistical agent
37 pursuant to Section 11751.5 shall provide to the Fraud Division a
38 current list of insured employers, in a manner that the Fraud
39 Division prescribes, for use in the Uninsured Employer-Database
40 *Identification Program* .

SEC. 4. Section 3701.9 is added to the Labor Code, to read:

3701.9. The director shall provide to the Fraud Division within the Department of Insurance a current list of all employers with a certificate of consent to self-insure as provided for under Section 3700, in a manner that the Fraud Division prescribes, for use in the Uninsured Employer-Database *Identification Program* .

SEC. 5. Section 1088 of the Unemployment Insurance Code is amended to read:

1088. (a) (1) Each employer shall file with the director, within the time required by subdivision (a) or (d) of Section 1110 for payment of employer contributions, a report of contributions and a report of wages paid to his or her workers in the form and containing any information as the director prescribes. An electronic funds transfer of contributions pursuant to subdivision (f) of Section 1110 shall satisfy the requirement for a report of contributions. The report of wages shall include individual amounts required to be withheld under Section 13020 or withheld under Section 13028.

(2) (A) In order to enhance efforts to reduce tax fraud and to reduce the personal income tax reporting burden, effective January 1, 1997, the report of wages shall also include the full first name of the employee and total wages, as defined in Section 13009, paid to each employee. This paragraph shall apply to reports of wages for all periods ending on or before December 31, 1999.

(B) For all periods beginning on or after January 1, 2000, the report of wages shall also include total wages subject to personal income tax, as defined in Section 13009.5, paid to each employee.

(b) Each employer shall file with the director within the time required by subdivision (b) or (d) of Section 1110 for payment of worker contributions, a report of contributions containing the employer's business name, address, and account number, the total amount of worker contributions due, and any other information as the director shall prescribe. The director shall prescribe the form for the report of contributions. An electronic funds transfer of contributions pursuant to subdivision (f) of Section 1110 shall satisfy the requirement for a report of contributions.

(c) In addition to the report of contributions and report of wages required by employers under subdivision (a), an individual who has elected coverage under subdivision (a) of Section 708 is also

1 required to file a separate report of contributions, subject to Part
2 2 (commencing with Section 2601).

3 (d) Any employer making an election under subdivision (d) of
4 Section 1110 shall submit the report of wages described in
5 subdivision (a), within the time required for submitting employer
6 contributions under subdivision (a) of Section 1110.

7 (e) In addition to the report of contributions and report of wages
8 described in subdivision (a), each employer shall file with the
9 director an annual reconciliation return showing the total amount
10 of wages, employer contributions required under Sections 976 and
11 976.6, worker contributions required under Section 984, the
12 amounts required to be withheld under Section 13020 or withheld
13 under Section 13028, and any other information as the director
14 shall prescribe. This annual reconciliation return shall be due on
15 the first day of January following the close of the prior calendar
16 year and shall become delinquent if not filed on or before the last
17 day of that month.

18 This subdivision shall not apply to individuals electing coverage
19 under Section 708 or 708.5 or employers electing financing under
20 Section 821.

21 (f) For purposes of making a report of wages under subdivision
22 (a), employers who are required under Section 6011 of the Internal
23 Revenue Code and authorized regulations thereunder to file
24 magnetic media returns, shall, within 90 days of becoming subject
25 to this requirement, do one of the following:

26 (1) Submit a magnetic media format to the department for
27 approval, and upon receiving approval from the department, submit
28 any subsequent reports of wages on magnetic media.

29 (2) Establish to the satisfaction of the director that there is a
30 lack of automation, a severe economic hardship, a current
31 exemption from submitting magnetic media information returns
32 for federal purposes, or other good cause for not complying with
33 the provisions of this subdivision. Approved waivers shall be valid
34 for six months or longer, at the discretion of the director.

35 (g) The Franchise Tax Board shall be allowed access to the
36 information filed with the department pursuant to this section.

37 (h) If an employer demonstrates that an undue hardship would
38 be imposed, the director may authorize an exemption from the
39 requirement in subdivision (a) to report individual amounts
40 withheld under Section 13020 and the requirement in subdivision

1 (e) to file the annual reconciliation return for the 1995 calendar
2 year only. Any request for exemption must be filed on or before
3 January 15, 1995. Upon approval of a request for exemption under
4 this subdivision, the employer shall file quarterly returns and
5 reports of wages in the manner and method prescribed by the
6 director for the 1995 calendar year only.

7 (i) The director shall provide to the Fraud Division within the
8 Department of Insurance a current list of all employers reporting
9 contributions and wages paid under this section, in a manner that
10 the Fraud Division prescribes, for use in the Uninsured Employer
11 ~~Database~~ *Identification Program* .